

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

SPECTRUM HEALTHCARE SERVICES, INC.
d/b/a CORRECTIONAL MEDICAL SERVICES¹

Employer

and

Case 4–RC–20761

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO, LOCAL 1358²

Petitioner

**REGIONAL DIRECTOR’S DECISION AND
DIRECTION OF ELECTION**

The Employer, Correctional Medical Services, provides health care services to prisoners in New Jersey state correctional facilities. The Petitioner, United Food and Commercial Workers Local 1358, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of Registered Nurses (RNs) and Licensed Practical Nurses (LPNs) employed by the Employer at the South Woods State Prison facility (South Woods) in Bridgeton, New Jersey. The Employer contends that this unit is inappropriate and that the smallest appropriate unit would also encompass its facilities at two other locations, Bayside Prison (Bayside) and Southern State Prison (Southern State). The Employer further contends that in addition to RNs and LPNs the unit must include Nurse Practitioners, Infection Control Nurses,³ the Discharge Planner, and the Ombudsperson. The Petitioner’s proposed unit would consist of about 43 employees, while the Employer’s proposed unit would consist of about 87 employees.⁴

A hearing officer of the Board held a hearing, and the parties filed briefs. I have considered the evidence and the arguments presented by the parties concerning the scope and composition of the unit.

¹ The Employer’s name appears as amended at the hearing.

² The Petitioner’s name appears as amended at the hearing.

³ The record also refers to this classification as the “Infectious Disease Nurse.”

⁴ These numbers do not include per-diem RNs and LPNs. The parties stipulated that the per-diem nurses who meet the Board’s eligibility requirements should be included in the bargaining unit, but the evidence presented as to the numbers of per-diem nurses was inexact.

As discussed below, I have concluded that the petitioned-for unit is inappropriate for collective-bargaining purposes and that the bargaining unit proposed by the Employer is the smallest appropriate unit. Accordingly, I have directed an election in a bargaining unit comprised of the RNs, LPNs, Nurse Practitioners, Infection Control Nurses, Discharge Planner, and Ombudsperson who work at the South Woods, Bayside, and Southern State facilities.⁵

To provide a context for my discussion concerning the issues raised by the parties, I will first present a brief overview of the Employer's operations and then review the factors that must be evaluated in resolving the issues raised by the parties. Finally, I will present in detail the facts and reasoning that support my conclusion as to each of the issues.

I. OVERVIEW OF OPERATIONS

The Employer is a nationwide company, headquartered in St. Louis, that has a contract with the New Jersey Department of Corrections to provide health care services to inmates at 15 prisons in the state. In New Jersey, the Employer's operations are divided into two regions. The South Woods, Bayside, and Southern State facilities comprise the Employer's Southern Region, and the Employer's Northern Region provides health care services at the 12 remaining correctional facilities.

South Woods' facilities include: three health care clinics for South Woods inmates; a Regional Clinic building which houses numerous health care specialty clinics, including podiatry, optometry, physical therapy, and dialysis; a 59-bed Extended Care Unit; a 12-bed infirmary; a five-bed hospice care unit; a 124-bed residential mental health care unit; and the Employer' administrative offices. The specialty clinics, hospice care unit, and mental health care unit are used by inmates from all correctional facilities in New Jersey, and the Extended Care Unit is used by male inmates throughout the state of New Jersey. At South Woods, there are currently 17 full-time RNs, five part-time RNs, 16 full-time LPNs, five part-time LPNs, two full-time Nurse Practitioners, one part-time Nurse Practitioner; two full-time Infection Control Nurses, a Discharge Planner, and an Ombudsperson. There are also about 20 per-diem RNs and 22 per-diem LPNs.⁶

Southern State's facilities consist of three health care clinics for inmates housed at the facility and a six-bed infirmary. Southern State employs nine full-time RNs, about seven per-diem RNs, six full-time LPNs, one part-time LPN, about five per-diem LPNs, and one Nurse Practitioner.

Bayside consists of three facilities, Bayside Medium, The Farm, and Ancora. The Employer operates a clinic at Bayside Medium, and the other two Bayside facilities only provide "sick call

⁵ Subsequent to the hearing, the Petitioner submitted a letter indicating that it would proceed to an election in any unit found appropriate by the Board.

⁶ As noted above, the record indicates that the number of per-diem nurses is highly approximate.

services."⁷ Bayside does not have an infirmary, and patients requiring health care overnight are transferred from Bayside to South Woods or Southern State. Bayside employs nine full-time RNs, one part-time RN, about six per-diem RNs, seven full-time LPNs, about ten per-diem LPNs, and one full-time Nurse Practitioner.

The three sites in the Southern Region are under the overall direction of Regional Administrator David Meeker. Meeker reports to a Regional Vice President for New Jersey, who is responsible for operations statewide. Meeker works four days a week at South Woods and spends half a day each at Bayside and Southern State.

Regional Director of Nursing Dana Baker helps oversee management of the nursing staffs at all three facilities and is responsible for providing regular in-service training of the nurses. She spends 50 percent of her time at South Woods and splits the rest of her time between Bayside and Southern State. A Regional Medical Director has duties similar to Baker with respect to physicians and Nurse Practitioners. Baker and the Regional Medical Director report to Meeker, and all three of them have offices at South Woods.

Each of the three sites has a Health Services Administrator (HSA), who is responsible for operations at that location. The HSAs report to Meeker. Each HSA is responsible, among other things, for scheduling employees, ordering supplies, developing initial staffing recommendations, imposing lower levels of employee discipline, and selecting applicants for employment. There is also an intermediate level of management at South Woods, an Associate Health Services Administrator, (AHSA) who reports to the HSA. There is no AHSA at the other two sites. At South Woods, all nurses report to the Director of Nursing (DON). At Bayside and Southern State, nurses report to Supervisors of Nursing, who have duties similar to the South Woods DON.

II. FACTORS RELEVANT TO DETERMINING WHETHER THE PETITIONED-FOR SINGLE-LOCATION UNIT IS APPROPRIATE FOR COLLECTIVE BARGAINING

The Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be an appropriate unit. *Overnite Transportation*, 322 NLRB 723 (1996); *P.J. Dick Contracting*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). Thus, the Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, further inquiry is unnecessary. *Bartlett Collins Co.*, 334 NLRB 484 (2001). See *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

⁷ Sick call services are examinations by a nurse or doctor. If the matter is serious, the inmate will be transferred to a clinic.

Ordinarily when considering a multi-facility operation, the Board holds that a single-location unit is presumptively appropriate for collective bargaining. *Trane, an Operating Unit of American Standard Cos.*, 339 NLRB No. 106 (2003); *J&L Plate, Inc.*, 310 NLRB 429 (1993). This presumption applies to the health care industry. *St. Luke's Health Systems*, 340 NLRB No. 139 (2003); *Manor Healthcare Corp.*, 285 NLRB 224 (1987). However, the presumption is rebuttable. In ascertaining whether there is a sufficient evidence to overcome the presumption, the Board examines factors which include: (1) geographic proximity; (2) employee interchange and transfer; (3) functional integration; (4) administrative centralization; (5) common supervision; and (6) bargaining history. *St. Luke's Health Care*, slip op. at 3; *West Jersey Health System*, 293 NLRB 749, 751 (1989). In health care cases, the Board also considers whether a single facility bargaining unit could result in disruption to patient care. *West Jersey Health System* at 751; *Manor Healthcare Corp.*, supra, at 235.

With respect to the disputed classifications, in non-acute health care facilities unit placement is determined pursuant to the "pragmatic or empirical community-of-interest" test set forth in *Park Manor Care Center, Inc.*, 305 NLRB 872 (1991). See *CGE Caresystems, Inc.* 328 NLRB 748 (1999).⁸ Under that test, the Board considers traditional community-of-interest criteria, as well as those factors considered relevant during the proceedings leading to the Board's Health Care Rule,⁹ and prior cases involving either the type of unit sought or the type of health care facility in dispute.

III. UNIT SCOPE

A. Facts

Geographic Proximity

South Woods, Southern State, and Bayside are all located in Cumberland County, New Jersey. South Woods is approximately 25 miles from Southern State, and Bayside Medium, where Bayside's clinic is located, is across the street from Southern State. The Farm is about a quarter of a mile from Bayside Medium, and Ancora is about 30 miles away from the other two Bayside facilities.¹⁰

Employee Contact and Interchange

⁸ Although the issue of whether these facilities provide acute or non-acute care was not specifically addressed by the parties, the Employer provides some acute care in the infirmaries at the facilities. The majority of services provided by the Employer are subacute, however, and no party contends that the unit composition questions should be resolved using an acute care hospital standard. Accordingly, this Decision will apply the nonacute health care facility standard.

⁹ The Health Care Rule, 29 CFR Sec. 103.30, which sought to avoid the proliferation of units in acute care hospitals, is set forth at 54 Fed Reg. 16336 et seq., 284 NLRB 1580 (1989). The proposed rules and related commentary are set forth at 284 NLRB 1515 et seq.

¹⁰ The record does not indicate where Ancora is located with respect to the other facilities.

Because South Woods provides some centralized services for the Southern Region and other services for all of the Employer's New Jersey locations, employees must communicate with other facilities to arrange patient transfers and coordinate care. Regional Administrator Meeker testified that employees at the three Southern Region facilities are in regular telephone contact for these purposes, and South Woods RN Kevin Frank testified that he has spoken with nurses at Bayside and Southern State when inmates from there have been transferred to South Woods.¹¹

During the years 2001, 2002, and 2003, there were nine permanent transfers by LPNs or RNs between South Woods and the two other facilities and one transfer of a Nurse Practitioner. There were an additional five permanent transfers to or from South Woods involving employees outside the proposed bargaining units. Further, four RNs or LPNs permanently transferred between Bayside and Southern State, and one Nurse Practitioner and three employees in other classifications transferred between those facilities. Transfer opportunities are posted in each facility for all job openings in New Jersey.¹²

The record also lists various examples of employee "sharing," or temporary transfers, between South Woods and the other two facilities during the same time period. Specifically, there were 10 instances of sharing LPNs or RNs, two instances of sharing Nurse Practitioners, and two examples of sharing employees in other classifications.¹³ Sixteen LPNs or RNs were shared between Bayside and Southern State, and four employees in other classifications were shared between the two facilities. The record does not indicate how long the temporary transfers lasted; Regional Administrator Meeker testified that the involved employees could have worked as little as one shift at another facility or could be more consistently employed at more than one facility. In fact, one LPN, Sara Dileo, currently works regularly at both South Woods and Bayside. Employees are not required to work at a facility other than their "home" facility. Rather, these temporary transfers are voluntary on the employees' part and usually initiated by the employee. RN Frank testified that during his tenure at South Woods, which began in October 2002, he was asked on two occasions, and offered a \$200 bonus, to work at Southern State, but he declined those requests. Nurses are regularly offered bonuses for covering open shifts, at their own facilities as well as at others. Frank testified that he had not been solicited to work at other facilities since the spring of 2003 but that he knew of about six other South Woods employees who have worked at Southern State on multiple occasions.

Administrative Centralization

¹¹ Meeker testified that patients transfer from Bayside and Southern State to the South Woods infirmary about once or twice a week and to the South Woods extended care facility about once or twice a month.

¹² These numbers do not include transfers or sharing to or from other Employer facilities. The parties stipulated to six examples of employees from facilities outside the Southern Region of New Jersey working at one of the three Southern Region facilities for one or more shifts during the same time period.

¹³ One of these employees, Christina Beebe, is an X-Ray Technician who splits her time between all three facilities.

The Employer's physicians are shared between all New Jersey facilities and are not reflected in these statistics.

The Human Resources Department (HR) sets most labor relations, payroll, and benefits policies for all of the Employer's facilities nationwide at corporate headquarters in St. Louis. Work rules and disciplinary policies are set forth in a handbook which was created by HR and applies to all employees nationwide.

Administrative operations are substantially consistent between the three facilities in the Employer's Southern Region. The HSA at each site drafts staffing plans based on the Employer's contract with the New Jersey Department of Corrections. Meeker must approve all staffing plans, and he made alterations to the most recent staffing recommendations by the HSAs in the fall of 2003. After the plans are finalized, they cannot be changed without the approval of both Meeker and officials at corporate headquarters. In conjunction with HR and the Regional Vice President, Meeker is also responsible for developing a budget for each facility, approving pay increases of more than three percent, approving all purchases over \$250, and making decisions to suspend and terminate employees.

A Regional Recruiter for the state of New Jersey is in charge of soliciting applications for new employees. The Regional Recruiter advertises for positions at any facility with an opening and then obtains applications, screens them, and forwards them to the relevant HSA. The HSA then schedules interviews and has the authority to select a candidate for hire. The DON or Supervisor of Nursing also is involved in hiring RNs and LPNs.

HR develops all position descriptions and initial wage rates, which are consistent for all New Jersey facilities. Management at each facility conducts an annual evaluation for all employees, on a form developed by HR. The HSA at each facility is empowered to grant annual wage increases of up to three percent for each employee but must seek approval from the Regional Administrator in order to provide a pay increase greater than that amount. Employee benefit packages are consistent among the three sites. HSAs are empowered to discipline employees through the early stages of the disciplinary process, but the Regional Administrator must approve unpaid suspensions or terminations, with the assistance of the Regional Vice President and the HR Department.¹⁴ The Employer provides a two-day orientation session at South Woods for all new Southern Region employees.

Payroll and timekeeping systems are consistent at all three facilities. Each employee has a "swipe card" that keeps track of his or her arrivals and departures at work. Though the cards are the same, an employee working at more than one site would need to have his or her information included in each site's computer system in order to track time at each site. Paydays and payroll are identical for each site, with a single payroll check issued for work performed at all sites.

HSAs are responsible for purchasing medical supplies and other supplies at their assigned sites. Corporate headquarters selects vendors and pays the bills. The facilities occasionally borrow medical supplies from each other.

¹⁴ The Employer has a progressive disciplinary policy with the following steps: verbal counseling, written counseling, final written warning, and recommendation for termination. Additionally, an employee may be suspended with or without pay at any point during the disciplinary process.

Supervision

The HSA at each facility oversees daily operations, assisted by the AHSA at South Woods. The nurses are directly supervised by the DON at South Woods and by a Supervisor of Nursing at both Bayside and Southern State. The DON and Supervisor of Nursing report to Regional Director of Nursing Baker, who is responsible for nursing services at the three Southern Region facilities and provides identical monthly in-service trainings at all three facilities. The Regional Medical Director supervises all physicians and Nurse Practitioners in the Southern Region.

Bargaining History

There is no bargaining history involving the Employer at these facilities. However, before 1996 when the Employer contracted with New Jersey to provide medical services to its correctional facility inmates, the New Jersey Department of Corrections directly provided these services. At that time, a different labor organization represented a single statewide unit of all RNs and LPNs employed at New Jersey correctional facilities. The South Woods facility was not open at that time, but Bayside and Southern State were included in the former statewide unit.

B. Analysis

I find that the Employer has successfully rebutted the presumption that the petitioned-for single-facility unit is appropriate. The three facilities constitute a distinct administrative grouping under the management of a Regional Administrator and Regional Director of Nursing, who regularly visit all three facilities. Cf. *Stormont-Vail Healthcare, Inc.*, 340 NLRB No. 143, slip op. at 4 (2003). The RNs and LPNs at the three facilities perform substantially identical work, and all are required to have similar skills, including professional licenses. All employees are subject to the same labor relations and personnel policies, paid according to the same pay scale, and receive the same fringe benefits, all administered at the national level by the HR Department. The fact that employees at the Employer's other facilities in New Jersey, and indeed, nationwide, share some of these characteristics does not detract from the community-of-interest between employees in the three Southern Region facilities.¹⁵

Although the vast majority of employees work at a single facility, there is meaningful temporary interchange between employees of South Woods and the other two facilities. Indeed, although "sharing" is not mandatory, it appears from RN Franks' testimony that employees are often asked to fill in elsewhere and may receive bonuses for working shifts at other facilities. Significantly, one LPN regularly works at both South Woods and Bayside. Employees have also been transferred permanently between one facility and another on at least nine occasions in the last three years. In its recent decision

¹⁵ In this regard, a statewide unit would also be appropriate.

in *St. Luke's Health System*, 340 NLRB No. 139 (2003), slip op. at 4, the Board emphasized evidence of permanent and temporary transfers in finding a high level of functional integration.¹⁶ Additionally, the employees regularly communicate with each other when transferring patients from one facility to another, and they are jointly trained as new hires and receive the same in-service training from the Regional Director of Nursing.

The distance between facilities does not militate against finding a multi-location unit appropriate, as all employees are located within 25 miles of one another. Significantly, all of the facilities are located in the same county in the southern New Jersey area, and their proximity has facilitated the permanent and temporary transfers of employees. *Ibid.*; *Stormont-Vail Healthcare, Inc.*, *supra*.

While employees are supervised on a daily basis directly by on-site supervisors, employees are subject to common overall management, which affects significant matters. Thus, the Regional Recruiter locates and screens employment applicants, and the Regional Administrator, Regional Vice President, and HR Department make the determination whether to impose the most serious levels of discipline. The Regional Administrator also circumscribes the HSAs' authority by reviewing all wage increases above three percent. See *St. Luke's Health System*, *supra*, slip op. at 4-5.

Finally, the collective-bargaining history of these facilities, while not highly significant, favors a multi-facility unit. Although the prior bargaining history did not involve the Employer, RNs and LPNs at all facilities statewide once comprised a single bargaining unit when these employees were employed by the state.¹⁷

Based on the foregoing, I find that employees at the three facilities comprising the Employer's Southern Region of New Jersey share a community of interest and that a single-facility unit consisting solely of employees at the South Woods location would be inappropriate. *St. Luke's Health System, Inc.*, *supra*; *Stormont-Vail Healthcare, Inc.*, *supra*; *West Jersey Health System*, *supra*. I have therefore directed an election in a unit of employees at the South Woods, Southern State, and Bayside facilities.

IV. UNIT COMPOSITION

¹⁶ Moreover, unlike in *St. Luke's Health Systems*, many of the transfers involve the petitioned-for location, South Woods.

Although the level of detail in the record concerning the context for these temporary transfers was not as thorough as might be desired in view of the Board's decision in *New Britain Transportation Co.*, 330 NLRB 397 (1999), I find that there is sufficient evidence of temporary interchange to support the finding that only a multi-location unit is appropriate.

¹⁷ My prior decision involving this employer, *Spectrum Healthcare Services, Inc., d/b/a Correctional Medical Services*, Case 4RC-19713 (1999), is irrelevant to this issue as the appropriateness of the single-facility unit was neither raised nor considered.

A. Nurse Practitioners

Facts

There are two full-time and one part-time Nurse Practitioners employed at South Woods, and one full-time Nurse Practitioner each at Bayside and Southern State. The Nurse Practitioners are RNs with three years of additional education and training, a more advanced license, and the added responsibilities of seeing and evaluating patients and prescribing medications under the supervision of a physician. The Nurse Practitioners also provide direct patient care. A Nurse Practitioner is considered the “senior provider” when working with RNs and LPNs, and therefore has an obligation to report problems with patient care and may direct RNs or LPNs concerning a patient’s treatment.¹⁸

Nurse Practitioners are paid annual salaries in the range of \$60,000 to \$70,000. RNs and LPNs are paid at hourly rates; day-shift RNs earn \$24 per hour. RNs and LPNs are paid for overtime work, but Nurse Practitioners are not. Nurse Practitioners’ fringe benefits are identical to RNs’ and LPNs’ benefits. The Nurse Practitioners work the “administrative” shift of 8:00 a.m. to 4:30 p.m., rather than the “clinical” shifts worked by the RNs and LPNs of 6:00 a.m. to 2:30 p.m. or 2:00 p.m. to 10:30 p.m.¹⁹ They occasionally attend the monthly staff meetings for RNs and LPNs. As noted above, Nurse Practitioners are supervised by the Regional Medical Director, who also supervises physicians, rather than by the DON or Supervisor of Nursing. Unlike the other nurses, Nurse Practitioners are required to execute a written agreement delineating their responsibilities as a condition of employment, and they have their own offices.

Analysis

The Nurse Practitioners are RNs with additional education, licensing, and job duties, and they are responsible for some of the same direct patient care duties as are the RNs. They also have some oversight responsibility with respect to RNs and LPNs and work directly with them at times. Their additional responsibilities, while highly important, are somewhat circumscribed by the need for a physician to approve the prescriptions they write. Although they are separately supervised and have their own offices and additional responsibilities, these differences are not extensive enough to preclude a community-of-interest finding in these circumstances. Moreover, in 1999, I issued a decision finding that Nurse Practitioners at South Woods should be included in an RN unit, and there is no evidence that their responsibilities or working conditions have significantly changed since then. Accordingly, I find that the Nurse Practitioners should be included in the unit. *Rockridge Medical Care Center*, 221 NLRB 560 (1975) (Nurse Practitioners in a clinical setting share community of interest with RNs).

B. Infection Control Nurses

¹⁸ No party contends, and the record does not indicate, that the Nurse Practitioners are supervisors within the meaning of Section 2(11) of the Act.

¹⁹ These hours are for South Woods and Bayside; Southern State’s first and second clinical shifts are 7:00 a.m. to 3:30 p.m. and 3:00 p.m. to 11:30 p.m.

Facts

There are two Infection Control Nurses at South Woods and one each at Bayside and Southern State. At South Woods, there is one RN and one LPN in this classification.²⁰ The Infection Control Nurses are either RNs or LPNs who specialize in the control and treatment of infectious diseases. They are involved in creating policies and procedures for controlling the spread of infectious diseases and for creating educational programs for other nurses in order to communicate those policies. They evaluate patients entering the facilities for infectious diseases such as hepatitis, HIV, shingles, or tuberculosis, and can isolate these patients from the general population in order to control the diseases' spread. The Infection Control Nurses work the clinical shifts like other RNs and LPNs. They are paid on an hourly basis and report to the DON or Supervisor of Nurses.

Analysis

The Infection Control Nurses are RNs or LPNs who specialize in controlling the spread of infectious disease. They do not require any special training or licensure, and they provide direct patient care on the same shifts as the other nurses and are commonly supervised. They also regularly communicate with the other nurses for educational purposes. I therefore find that the Infection Control Nurses share a community of interest with the other nurses and should be included in the unit. *Frederick Memorial Hospital*, 254 NLRB 36, 39 (1981), enf. denied on other grounds, 691 F.2d 191 (4th Cir. 1982).

C. Discharge Planner and Ombudsperson

Facts

There is one full-time Discharge Planner, who has an office at South Woods and reports to the AHSA there. The Discharge Planner is an RN or LPN responsible for managing the continuing medical care of inmates who are to be released from prison. The position was created in January 2004. The Discharge Planner does not provide direct patient care but interacts with RNs and LPNs to ascertain the level of care needed for a patient being released. The incumbent in this position is an LPN, who is hourly paid at a higher rate than other LPNs and works the administrative shift.

The Ombudsperson is a full-time RN or LPN²¹ who is responsible for investigating patient complaints concerning their medical care but does not personally provide direct patient care. The Ombudsperson takes complaints, investigates them, reports his or her findings to the HSA, and responds to the complainant. This position also was created in January 2004. The Ombudsperson, an hourly employee, is paid more than LPNs. He or she interacts with RNs and LPNs in the course of

²⁰ The record does not indicate whether the Infection Control Nurses at Bayside and Southern State currently are RNs or LPNs.

²¹ The current Ombudsperson is an LPN.

investigating patient complaints. The Ombudsperson works the administrative shift and has an office near the other administrative offices at South Woods.

Analysis

The Discharge Planner and Ombudsperson classifications are primarily administrative in nature, unlike RNs, LPNs, Nurse Practitioners, and Infection Control Nurses. The Board has found in various acute-care hospital cases that nurses who perform administrative duties should be included in an overall nurse unit because of their common training and licensing and interaction with direct care nurses. See, e.g., *Pocono Medical Center*, 305 NLRB 398 (1991); *Frederick Memorial Hospital*, supra. The Board has, however occasionally excluded such classifications on the grounds that their duties are principally administrative. *Ralph K. Davies Medical Center*, 256 NLRB 1113 (1981) (Utilization Review Coordinator).

The Board has found that Discharge Planners may properly be included in an RN unit where they are required to hold an RN's license. *Salem Hospital*, 333 NLRB 560 (2001); *Pocono Medical Center*, supra. In this case, the Discharge Planner, while providing no direct patient care, works with the other nurses to coordinate continuing patient care. I therefore find that the Discharge Planner, who is required to hold either an RN or an LPN license, should be included in the unit.

The Ombudsperson is also an RN or LPN who is not involved in direct patient care. The Ombudsperson works with RNs and LPNs in attempting to resolve the concerns of the patients treated by the other nurses. The Ombudsperson needs to be in regular contact with RNs and LPNs to discuss patient care issues and problems. I therefore find that the Ombudsperson shares a community of interest with the RNs and LPNs.

With respect to both of these classifications, the Board will not exclude a classification from an acute or non-acute health care unit if such exclusion would result in an impractically small residual unit. *Charter Hospital of Orlando South*, 313 NLRB 951, 952-953 (1994); *Lifeline Mobile Medics*, 308 NLRB 1068 (1992); *Park Manor*, supra, 308 NLRB at 877, fn. 24. Here, there is only one Discharge Planner and one Ombudsperson, and a two-person residual unit would be too small for meaningful bargaining and would result in an undesired proliferation of units.

Professional Status and Sonotone Election

Neither party took a position concerning the professional status of the four disputed classifications. Based on their education, licenses, and patient care responsibilities, I find that the RNs and Nurse Practitioners are professional employees within the meaning of Section 9(b)(1) of the Act, and they may therefore constitute a separate appropriate unit. *Holliswood Hospital*, 312 NLRB 1185 (1993); *Centralia Convalescent Center*, 295 NLRB 42 (1989). I further find that the Infection Control Nurses, Discharge Planner, and Ombudsperson are not professional employees because they are not required to hold an RN's license. The Board has traditionally assessed professional status based on the qualifications necessary for the work performed, not on the individual employee's

qualification. *Western Electric Co.*, 126 NLRB 1346, 1348-1349 (1960). Moreover, the Discharge Planner, Ombudsperson, and at least one of the Infection Control Nurses are LPNs.²² I further find that a unit consisting of both professionals and nonprofessionals would also be appropriate if the RNs and Nurse Practitioners voted for inclusion in such a unit. Consistent with the Board's practice and the statute, when such individuals are included with nonprofessionals, they are entitled to the benefit of a *Sonotone* election to determine if they wish to be included in the unit.²³ *Dominican Santa Cruz Hospital*, 307 NLRB 506, 508 (1992); *St. John of God Hospital, Inc.*, 260 NLRB 905, 906 (1982). Accordingly, I have directed a *Sonotone* election.

Eligibility of Per-Diem Nurses

As noted above, there are a number of per-diem RNs and LPNs who work in the three facilities on an intermittent basis. These employees shall be eligible to vote if they worked a minimum of eight hours per biweekly period during the quarter preceding the filing of the petition. See *Sister of Mercy Health Corp.*, 298 NLRB 483 (1990).

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

²² In this regard, the Board in *Salem Hospital*, supra, excluded Case Managers from an RN unit on the ground that they lacked RNs' licenses stating, "where RN licensing is not a job requirement, it must be concluded that RN education and training is not necessary to perform the job's functions." Thus, where professional education and training is not needed to perform the job, it follows that the job is not professional. See, e.g., *Ohio State Legal Services Assoc.*, 239 NLRB 594, 596 (1978) (attorney working as a lobbyist not a professional where law degree not required for his position); *Willett Motor Coach Co.*, 227 NLRB 882, 883 (1977) (accountants with college-level accounting qualifications are nonprofessionals where their work is routine and requires little independent judgment).

²³ Under *Sonotone Corp.*, 90 NLRB 1236 (1956) and Section 9(b)(1) of the Act, the Board can not join professionals and nonprofessionals in the same unit without the desire of the professional employees being determined in a separate vote.

5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A

All full-time, regular part-time, and per-diem Registered Nurses and Nurse Practitioners employed by the Employer at its South Woods State Prison, Bayside Prison, and Southern State Prison facilities, excluding all other employees, Health Services Technicians, Certified Nursing Assistants,²⁴ confidential employees, guards and supervisors as defined in the Act.

Unit B

All full-time, regular part-time, and per-diem Licensed Practical Nurses, Infection Control Nurses, Discharge Planner, and Ombudsperson employed by the Employer at its South Woods State Prison, Bayside Prison, and Southern State Prison facilities, excluding all other employees, Health Services Technicians, Certified Nursing Assistants, confidential employees, guards and supervisors as defined in the Act.

The ballot for Unit A will ask two questions:

1. Do you wish to be included in the same unit as the Licensed Practical Nurses, Infection Control Nurses, Discharge Planner, and Ombudsperson employed by the Employer for purposes of collective bargaining?
2. Do you desire to be represented for the purposes of collective bargaining by United Food and Commercial Workers International Union, AFL-CIO, Local 1358?

If a majority of Unit A votes yes to the first question, indicating a desire to be included in the unit with the LPNs and other non-professional classifications, their votes will be included along with Unit B's votes in one overall unit. If, on the other hand, the majority of Unit A votes against inclusion, they will not be included in a unit with the LPNs and other non-professional classifications. In that event, their votes on the second question will be counted separately to decide whether they wish to be represented by the Petitioner in a separate unit.

The Petitioner's showing of interest may now be inadequate due to the additional employees included in the unit as a result of this Decision. Accordingly, the Petitioner has 10 days from the issuance of this Decision to augment its showing of interest, if necessary. If the Petitioner fails to submit an

²⁴ The parties stipulated to the exclusion of Health Services Technicians and Certified Nursing Assistants.

adequate showing of interest within this period, the petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **United Food and Commercial Workers International Union, AFL-CIO, Local 1358**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike that commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit Lists of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within **7** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list for Unit A and Unit B, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. To speed both preliminary

checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). These lists may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the lists available to all parties to the election only after I shall have determined that an adequate showing of interest among the employees in the units found appropriate have been established.

To be timely filed, the lists must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **February 27, 2004**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by facsimile transmission at (215) 597-7658. Since the lists will be made available to all parties to the election, please furnish a total of **three** copies of each list, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

D. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **March 5, 2004**.

Signed: February 20, 2004

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

